

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

8 UNITED STATES OF AMERICA,)
9)
10 Plaintiff-Appellee,) 2:05-CR-58-JCM (GWF)
11 vs.)
12 KENYON DEVERS,)
13 Defendant-Appellant.)
14) ORDER

14 Presently before the court is defendant Kenyon Devers' appeal of the magistrate's detention
15 order and motion for preliminary hearing. (Doc. #125). The government has not responded.

16 On January 6, 2012, defendant filed a motion to reopen detention hearing. (Doc. #125). In
17 the same motion, defendant moved in the alternative to appeal the magistrate's detention order or to
18 have the magistrate judge hold a preliminary hearing. (Doc. #125). On January 12, 2012, the
19 magistrate judge denied defendant's motion to reopen detention proceedings, finding that "there is
20 no showing of new evidence that was not available to the court at the time of the detention hearing."
21 (Doc. #127). The magistrate's order further referred the two alternative motions to this court. (Doc.
22 #127).

Pursuant to 18 U.S.C. § 3145(b), “[i]f a person is ordered detained by a magistrate judge . . .
23 the person may file, with the court having original jurisdiction over the offense, a motion for
24 revocation or amendment of the order. The motion shall be determined promptly.” In *United States*
25 *v. Koenig*, 912 F.2d 1190, 1193 (9th Cir. 1990), the Ninth Circuit held that a district court reviewing
26 a magistrate judge’s detention order “should review the evidence before the magistrate and make its
27 own independent determination whether the magistrate’s findings are correct, with no deference.”
28

Under the detention statute, 18 U.S.C. § 3142, a judicial officer must find “by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community” before ordering the release. In the original detention order, the magistrate judge held that he “cannot find by clear and convincing evidence that the defendant is not a risk of flight and not a danger to the community.” (Doc. #123).

6 After an independent review of the evidence, the court agrees with the magistrate judge that
7 it is unable to find, by clear and convincing evidence, that defendant is not a danger to the community
8 or a risk of flight.

9 Alternatively, defendant asserts his right to a preliminary hearing pursuant to Federal Rules
10 of Criminal Procedure 32.1(b)(1)(A). Rule 32.1(b)(1)(A) assigns the preliminary hearing to a
11 magistrate judge.

12 | Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Kenyon Devers'
14 motion to appeal the magistrate's detention order (doc. #125) be, and the same hereby is, DENIED.

15 IT IS FURTHER ORDERED that defendant Kenyon Devers' motion for preliminary hearing
16 (doc. #125) be, and the same hereby is, referred to Magistrate Judge Foley.

17 || DATED January 17, 2012.

Xem C. Mahan
UNITED STATES DISTRICT JUDGE